FILE COPY

SUPREME COURT OF THE UNITED STATES

No. 214

——Term——

Juan Bengzon,
Petitioner,

—versus—

The Secretary of Justice and the Insular Auditor of the Philippine Islands,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF THE PHILIPPINES AND BRIEF IN SUPPORT THEREOF

ILAYA PRESS

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IN THE
SUPREME COURT OF THE UNITED STATES

NO. _____

_____TERM 19_____

JUAN BENGZON,
Petitioner,

– vs. –

THE SECRETARY OF JUSTICE
and
THE INSULAR AUDITOR
OF THE PHILIPPINE ISLANDS
Respondents.

PETITION FOR CERTIORARI

To the Supreme Court of the United States:

Your petitioner respectfully prays for a writ of certiorari to review the judgment of the Supreme Court of the Commonwealth of the Philippines in the case of Juan Bengzon, petitioner-appellant v. The Secretary of Justice and Insular Auditor, respondents-appellees (G.R. 42821). The decision of the Supreme Court of the Philippine Islands was promulgated January 18, 1936; final judgment was entered February 7, 1936. Your petitioner submits the following statement of facts:

I.

Juan Bengzon, the petitioner, was in the Government service as Justice of the Peace for the municipality of Lingayen, Pangasinan, P. I., from March 7, 1912, to January 14, 1933, on which latter date

he was retired from the service by reason of Act No. 3899 of the Philippine Legislature, which provides that the Justices of the Peace who have reached the age of 65 years shall be automatically retired from the service. On February 21, 1933, the Philippine Legislature passed Act 4051 (Exhibit A, Record p. 4-8), commonly known as the Gratuity Law, which provides for the retirement of certain government employees with gratuity depending upon the length of their service. Section 7 of said Act 4051 specifically provides that the Justices of the Peace who must be retired under Act 3899 shall be entitled to the benefits of the Gratuity Law, Act 4051. The Governor-General of the Philippine Islands, Honorable Theodore Roosevelt, approved Act 4051, with the exception of said section 7 of said Act 4051. (Record, pp. 4-8).

II.

The petitioner, Juan Bengzon, duly filed his application for his gratuity, in accordance with Act 4051, with the Governor-General, the Secretary of Justice and the Insular Auditor, but his claim for gratuity was denied by all these officials, on the ground that section 7 of Act 4051 was vetoed by the Governor-General, (Record, pp. 18-29). On March 7, 1934, petitioner filed an action for a writ of mandamus in the Court of First Instance of Manila, P. I., against the Secretary of Justice and Insular Auditor, present respondents herein. The petitioner contended, in his action, that section 7 of Act 4051 is in force as law, because the veto by the Governor-General of said section was unconstitutional, the same being against the provision of section 19 of the Act of Congress of August 29, 1916, or the Jones Law. (Record, pp. 1-3).

III.

The case was submitted by the parties on a stipulation of facts (Record, pp. 18-29) and on August 25, 1934, the Court rendered a decision against the petitioner. (Record, pp. 29-35). The Court held that the validity of the veto by the Governor-General of said section 7 of Act 4051 could not be raised or determined in the cause because the Governor-General was not a party to the case. From that decision, petitioner duly appealed to the Supreme Court of the Philippine Islands. (Record, pp. 35-36)

IV.

The cause was duly docketed in the Supreme Court of the Philippine Islands, bearing No. 42821 of the General Register, petitioner and appellant assigning the following errors:

1. The Court A QUO erred in declaring that the question of the validity and the constitutionality of the veto by the Governor-General of section 7 of Act 4051 cannot be determined in this present case because the Governor-General is not included as a party to it, and, thus in dismissing plaintiff's action with costs.

2. The Court A QUO erred in not declaring that the veto by the Governor-General of section 7 of Act 4051 is unconstitutional and invalid, hence said section 7 of Act 4051 is in full force and effect as law.

3. The lower Court erred in not declaring that the plaintiff-petitioner is entitled to his gratuity under said section 7 of Act 4051.

4. The Court A QUO erred in not granting plaintiff-appellant's petition for the issuance of a writ of mandamus directed against defendants-respondents. (Record, pp. 35-36)

V.

January 18, 1936, the Supreme Court of the Philippine Islands promulgated its decision declaring that Act 4051 is an appropriation law and that section 7 of said Act 4051 is an "item of an appropriation bill" within the meaning of section 19 of the Act of Congress of August 29, 1916, or Jones Law, as well as of Article VI, section 2, of the Constitution of the new Philippine Commonwealth, and that the Philippine Legislature, not having overriden the veto and the Executive Department of the government having accepted said veto as valid, the presumption is that the act of the Governor-General was constitutional and the Court must respect said implied approval, hence the veto by the Governor-General of said section 7 of Act 4051 is valid and constitutional and, therefore, petitioner is not entitled to the gratuity. The judgment of the lower Court was affirmed, four justices dissenting. (Record, pp. 36-50)

VI.

January 29, 1936, the Supreme Court of the Philippine Islands, upon consideration of a motion filed by petitioner-appellant, ordered that the record be retained pending the preparation of a petition to the Supreme Court of the United States for a writ of certiorari. (Record, p. 59).

February 7, 1936, the final judgment of the Supreme Court of the Philippine Islands was entered, as follows:

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its

decision and order for judgment having been filed on the 18th day of January, 1936;

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the 25th day of August, 1934, and from which the above entitled appeal was taken, be, and the same is hereby, affirmed, without special pronouncement as to costs in either instance. (Record, pp. 59-60).

REASONS FOR THE ALLOWANCE OF THE WRIT

Your petitioner urges the following reasons for the allowance of the writ of certiorari herein prayed for:

I.

This litigation involves the interpretation of section 19 of the Act of Congress of August 29, 1916, or the Jones Law, and of Article VI, section 2, of the constitution of the present Commonwealth of the Philippines.

II.

The Supreme Court of the Philippine Islands, in its decision in the above entitled cause, in effect, held that the Chief Executive of the Philippine Islands may, under section 19 of the Act of Congress of August 29, 1916, or the Jones Law, and of Article VI, section 2, of the constitution of the Commonwealth of the Philippines, veto any part or parts of any bill which is not an appropriation bill or that he may veto any section or part of any appropriation bill which is not of itself an appropriation.

III.

The decision of the Supreme Court of the Philippine Islands in the above entitled cause is far reaching in its effects on present day legislation in the Islands, involving as it does the power of the Chief Executive of the Commonwealth of the Philippines to veto any part or parts of any bill passed by the legislature.

IV.

Act 4051 of the Philippine Legislature (Exhibit A, Record, pp. 4-8), though providing, in one of its sections, that the necessary sum to carry out the purposes of the act is appropriated, is not "an appropriation bill" within the meaning of section 19 of the Act of Congress of August 29, 1916, or the Jones Law, and of Article VI, section 2, of the constitution of the Commonwealth of the Philippines and section 7 of Act 4051 of the Philippine Legislature which provides that the justices of the peace retired under Act 3899 are also entitled to the benefits of the Gratuity Act (Act 4051) is not "an item of an appropriation bill" within the meaning of section 19 of the Act of Congress of August 29, 1916, or the Jones Law, and of Article VI, section 2, of the constitution of the Commonwealth of the Philippines in that said section of Act 4051 is not, of itself, an appropriation.

V.

The Supreme Court of the Philippine Islands erred in holding that the veto by the Chief Executive of section 7 of Act 4051, not having been overriden by the Philippine Legislature and the executive department having acquiesced to the same, the judicial branch must respect said veto, hence it is valid and constitutional, thus, in effect, subordinating the judicial department to the other branches of the gov-

ernment and making the interpretation of the constitution dependent upon the attitude and conduct of the executive and legislative branches of the government.

THE ISSUES OF LAW

1. Is Act 4051 of the Philippine Legislature an appropriation bill within the meaning of section 19 of the Act of Congress of August 29, 1916, or the Jones Law, and of Article VI, section 2, of the constitution of the Commonwealth of the Philippines which provide that the chief executive may veto "any item or items of an appropriation bill"?

2. Section 7 of Act 4051 provides:

"The justices of the peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, shall also be entitled to the gratuities provided for in this Act."

The Chief Executive approved Act 4051 with the exception of said section 7 which he vetoed.

The issue presented is:

Is said section 7 of Act 4051 "an item of an appropriation bill" within the meaning of section 19 of the Jones Law and of Article VI, Section 2, of the constitution of the Commonwealth of the Philippines and is the veto by the Governor-General of said section valid and constitutional?

DISCUSSION

FIRST ISSUE OF LAW

Act 4051 of the Philippine Legislature has this for title:

> **"An Act to provide for the payment of retirement gratuities to officers and employees of the insular government retired from the service as a result of reorganization or reduction of personnel thereof, including the justices of the peace who must relinquish office in accordance with the provisions of act numbered thirty-eight hundred and ninety-nine, and for other purposes."**

Act 4051 contains 12 sections. A careful examination of the act shows that every section of the act, except section 10, treats of the gratuity granted by the Act, but does not mention any funds or money of the government, much less appropriate any sum from the treasury for any purpose whatsoever.

Section 10 of the act, however, provides:

> **"The necessary sum to carry out the purposes of this Act is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated."**

It is submitted that Act 4051 of the Philippine Legislature is not "an appropriation bill" within the meaning of section 19 of the Jones Law and of Article VI, section 2, of the constitution of the Commonwealth of the Philippines. It is a gratuity act, no more, no less. It is a gratuity act and not an appropriation act in spite of section 10 thereof. The mere fact that section 10 of Act 4051 makes an appropriation is merely a collateral incident, a necessary and concomitant proviso to carry out the purpose of the act, an indispensable appendage to the accomplishment of the object of the Legislature embodied in the Act, and that is, to grant gratuity to certain officers and employees of the government. In other words, said section 10 is nothing but a

logical corollary of the other provisions of the act to carry into effect the object of the law. It certainly cannot be denied that said section 10, taken by itself, is an appropriation, but certainly it is not and it cannot be the essence of the act, much less is it the element that gives the act its nature. Consequently, in no sense can it be said and successfully maintained that Act 4051 is an appropriation act.

Assuming, for the sake of argument, that Act 4051 is an appropriation Act, it is respectfully submitted it is not "an appropriation bill" within the meaning of section 19 of the Jones Law and of Article VI, section 2, of the constitution of the Commonwealth of the Philippines.

The phrase "appropriation bill" has a definite meaning in constitutional law. Bearing in mind the history of this proviso as to the special veto power of the chief executive, as well as the purpose behind the existence of said special veto power, the phrase "appropriation bill" can mean no other than a general appropriation bill, or at most, special appropriation bills, with distinct items of appropriations. (State v. Holder, 76 Miss., 158, 23 So. Rep. 643). But certainly, it cannot mean any bill,whatever its purpose, object and subject may be, that happens accidentally to provide in one of its sections a certain appropriation. Such interpretation would be illogical and will surely defeat the very purpose of those responsible for the proviso in question. It would for sure destroy all the safeguards contained in the constitution as to the separation of powers in the government, will make the power of the Chief Executive omnipotent, for then he will have practically the same legislative power as the very Legislature, and we shall have a

condition of things never contemplated and appalling in its possible consequences.

SECOND ISSUE OF LAW

Section 7 of Act 4051 of the Philippine Legislature provides:

> "The justices of the peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine shall also be entitled to the gratuities provided for in this Act."

It is submitted that said section 7 of Act 4051 is not "an item of an appropriation bill" within the meaning of section 19 of the Jones Law and of Article VI, section 2, of the constitution of the Commonwealth of the Philippines. It is because said section 7, taken by itself, is not an appropriation. Examined carefully, said section 7 is merely a condition or proviso of an appropriation. We submit, the executive cannot veto a condition or proviso of an appropriation *while allowing the appropriation to stand.* That would be affirmative legislation, without even the concurrence of the legislature.

For these reasons we ask the allowance of the writ of certiorari prayed for in this matter.

Respectfully submitted,

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